



# **Wilbur v. City of Mount Vernon**

USDC Western District of WA Cause No. 2:11-cv-01100 RSL

**“In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.”**

	SYBRANDY	WITT	TOTAL
2009	1,206	1,136	2,342
2010	963	1,165	2,128
2011	1,173	1,098	2,271

## Sybrandy & Witt Caseloads



REPORT FOR MORGAN WITT - BURL 6/15 (Date)

Name      No.      Charge      Prob?      Disposition      IC?      Appeal?      Hours

BELONIA	13924	A4	Y	CLOSE	N	N	1/4
ROCKES	13224	D3	N	PLEA	N	N	1/2
ANDERSON	11309	21 PIC	N	PLEA	N	N	1/2
BELONIA	10295	D25	Y	CLOSE	N	N	1/4
BELONIA	10296	FARM 45	Y	CLOSE	N	N	1/4
CALAND	11816	VPO	Y	CLOSE	N	N	1/2
DAY	11008	A4	Y	CLOSE	N	N	1/2
CARBONE	14110	A4	N	D/U	N	N	1/4
HAMILTON	11963	L13 BOOKS	N	PLEA	N	N	1/2
HAMILTON	11904	D3	N	P/F 250	N	N	1/2
KOLLY	60225	D3	N	P/F	N	N	1/2
NOLSON	12214	T3	N	PLEA DC	N	N	1/2
PETRICH	13246	D3	N	P/F	N	N	1/2
ROBY	13351	T3	N	P/F	N	N	1/2

DEFS-BURL\_001511

MEMORANDUM TO MOUNT VERNON/BURLINGTON PUBLIC DEFENDER DEFENDANTS  
PLEASE READ CAREFULLY

To: \_\_\_\_\_ Case No(s): \_\_\_\_\_

Please note your attorney in this case is \_\_\_\_\_

1. The attorney listed above has been appointed to represent you on the criminal charges listed. Please note our office has filed a Notice of Appearance on your behalf and your further arraignment court date will be continued to a pretrial hearing date. You will receive a notice of that new date in the mail (sent by the court). If you do not receive a notice from the court in the mail within a couple of days of receipt of this letter, call the court to confirm your court date.
2. It is extremely important that the court has your current address so that it can send you notice of all court dates. It is your responsibility to keep both our office and the court advised of your current address. We also need your current telephone number at all times.
3. If at any point prior to the end of your case, you think that you do not have any pending court dates, you are wrong. Contact the court immediately to determine when your next court date is.
4. You must show up to each and every one of your court dates. Do not contact our office to obtain a different court date or a continuance unless it is a documented emergency or documented extreme hardship to you. If you are able to document an emergency or extreme hardship, do not wait until the last minute to call our offices for a continuance. Call ahead of time and we may be able to accommodate your request – it is not our decision to make. Unless you specifically hear from our offices that you do not need to attend your hearing, you must attend your hearing or a warrant will be issued for your arrest.
5. **Our offices do not quash warrants.** If you wish to quash a warrant, you can do so by going to the court and paying a warrant quashing fee. They will issue you a new date to appear in court.
6. You are free to make an appointment with our office to meet with your attorney. We will not, however, schedule an appointment with you until we have copies of all the police reports in your case, because without that information, a meeting is completely useless.
7. Do not worry or be alarmed if your "Pretrial" court date is coming up and you have not met with your attorney yet. We often do not receive police reports until the day prior to your first pretrial hearing. If that is the case, we can continue your pretrial date if necessary.
8. Our representation of you stops when your case is resolved or when a warrant is issued for your arrest. We do not continue to represent you unless specifically re appointed by the court.

IMPORTANT TELEPHONE NUMBERS AND ADDRESSES:

Richard M. Sybrandy 360-336-5533  
Morgan M. Witt 360-336-1614  
508 South Second Street  
Mount Vernon, Washington 98273

Burlington Municipal Court 360-755-0492  
311 Cedar, Suite A  
Burlington, WA 98233

Mount Vernon Municipal Court 360-336-6205  
1805 Continental Place  
Mount Vernon, WA 98273

SKAGIT-PDR\_000562

**“We will not...schedule an appointment with you until we have copies of all the police reports in your case, because without that information, a meeting is completely useless.”**

# Failure to Communicate: Witt & Sybrandy

July 25

Jail (DARE) - Municipal Court  
SKAGIT COUNTY PUBLIC DEFENDERS OFFICE INMATE  
CONFIDENTIAL PUBLIC DEFENDER REQUEST FORM  
FORMA CONFIDENCIAL DE PETICIONES PARA PRESOS DEL  
DEFENSOR PUBLICO

Name of Attorney: To whom it may concern  
Nombre de Abogado: \_\_\_\_\_

Name of client/inmate: Durant Vance  
Nombre de cliente/carcelado: \_\_\_\_\_

Date: July 25  
Date: \_\_\_\_\_

Request: ☒ Please come to see me  
Petición: ☒ Favor de venir a verme  
☐ Please call me  
☐ Favor de llamarme  
☐ Other  
☐ Otro

I have been incarcerated since July 5th and have not yet received any council [sic] on case # MC24563. Can someone please contact me.

Morgan Witt

Public Defender Form - June 3, 2010

Marshall Decl - 653  
C11-01100 RSL

SKAGIT-PDR\_000487

"I have been incarcerated since July 5<sup>th</sup> and have not yet received any council [sic] on case # MC24563. Can someone please contact me."

Failure to Communicate: Witt & Sybrandy

Ex. 13 @ SKAGIT-PDR\_000487



<b>Skagit County Office of Assigned Counsel</b>				
<b><u>Inmate Visit Statistics: 2010</u></b>				
<i>**Actual clients seen in custody</i>				
	<b>Skagit County Public Defender's Office</b>	<b>Skagit County Office of Assigned Counsel Conflict Attorneys</b>	<b>City of Mt.Vernon &amp; Burlington Municipal Court Public Defenders</b>	
Jan	131	20	0	
Feb	130	13	0	
March	176	25	0	
April	139	25	1	
May	127	26	0	
June	133	45	2	
July	120	42	2	
Aug	136	42	0	
Sept	123	32	1	
Oct	110	28	1	
Nov	100	24	0	
Dec	126	37	0	
<b>TOTALS</b>	<b>1551</b>	<b>359</b>	<b>7</b>	



- **No investigations**
  - **No research or motion practice**
  - **Very few trials – five in 2010; two in 2011**
  - **Rights and possible defenses not explained**
  - **Adverse consequences not explained**
  - **Failure to advocate**
  - **No confidentiality**
  - **No attorney-client relationship**
-



**“A member of the Public Defender staff shall visit any assigned in-custody criminal defendant...within one (1) court day” of assignment.**

**“The Public Defender will attempt to initiate contact with all assigned defendants within twenty-four (24) hours of case assignment.”**

**Draft 2009 Contract for Public Defense**

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**“It would be extraordinary for us to be directed to initiate contact with the defendants.”**

**“[T]o require a visit to the jail . . . would make no sense, at least at the level of compensation we have proposed.”**

Ex. 36

**I wasn’t telling them that I *could not* contact or meet with defendants at that level of compensation. I was telling them that I would not contact or meet with defendants.**

Sybrandy Testimony

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3. A member of the Public Defender staff shall ~~visit any assigned in-custody criminal defendant and~~ obtain basic contact and other fundamental intake information for a bail hearing within one (1) court day from notification to the Public Defender of the assignment of the case and the in-custody status of the defendant.

4. ~~The Public Defender will attempt to initiate contact with all assigned defendants within twenty-four (24) hours of a case assignment.~~ The Public Defender shall provide defendants with contact information for availability during office hours. The Public Defender will also return phone calls or other attempts to contact the Public Defender within forty-eight (48) hours, excluding weekends.

3. A member of the Public Defender staff shall obtain basic contact and other fundamental intake information for a bail hearing within one (1) court day from notification to the Public Defender of the assignment of the case and the in-custody status of the defendant.

4. The Public Defender shall provide defendants with contact information for availability during office hours. The Public Defender will also return phone calls or other attempts to contact the Public Defender within forty-eight (48) hours, excluding weekends.



Letty Alvarez

From: Letty Alvarez  
Sent: Wednesday, December 31, 2008 11:59 AM  
To: Pam Springer, Clements, Elbert, Marilyn Ditt  
Subject: PW: Screening services for Burlington

Fyi...  
Sorry I didn't include you in the initial email.

Happy New Year!

Letty Alvarez, Director  
Skagit County Office of Assigned Counsel  
205 W. Xibaldia #305  
Mount Vernon, WA 98273  
(360) 336-9418  
Fax (360) 336-9419  
lettya@co.skagit.wa.us

From: Letty Alvarez  
Sent: Wednesday, December 31, 2008 11:06 AM  
To: 'twit@kclgo.net'; Richard M. Sybrandy  
Cc: Don Evans; Warren M. Gilbert; Linton Smith; Jan Amsdahl; 'twit@co.skagit.wa.us'  
Subject: Screening services for Burlington

Morgan and Richard,

As you may already know, the Office of Assigned Counsel will start indigent defense screening for the City of Burlington as of January 1st, 2009. The process won't be much different than the current process that we currently have with the Mount Vernon Municipal court. Your faxed referral is the appointment of counsel for that client. The in custody client referrals will include all the cases that they have pending, you are only responsible for your courts. This information is being included because many of the clients have multiple charges in different courts. For clients who may be heading off to prison, this information will hopefully increase communication among the attorneys and should help with a resolution of cases before they leave.

We will also be giving the clients an appointment of counsel card, this is our business card with case information on that back that they can show to the court that counsel has been appointed, along with the date that they were referred to you. This process will help the courts with clients who go to court, come to our office, and again to court with no attorney there to represent them even though counsel has been appointed.

My office will no longer be giving the handout that you requested to be given to your clients. This handout only seems to confuse the clients who may end up seeing us or coming back to my office for help. There were some problems with the numbers on the handout. A lack of attorney contact or communication has been a major complaint from the MV clients. In order to facilitate an easier process, we are going to set up an appointment with you. Though looking at your contract it looks like some additions to the scope of service have been added addressing client communication, hopefully this alleviates this problem. It may also be beneficial for your office to contact Susan Barrett at the Skagit Co. Public Defenders office and implement the client contact model they use.

An additional change will also be made by my office in regards to representation complaints, we will no longer be forwarding them to the court, they will now be forwarded to the contract manager who will be monitoring this contract for the city of Mount Vernon and Burlington.

If you have any questions, please feel free to call.

Have a Safe and Happy New Year!

SKAGIT-PCR\_000555

**“[L]ack of attorney contact or communication has been a major complaint from the MV clients.”**

**To establish a claim under 42 U.S.C. § 1983, a plaintiff must show:**

- 1. that a constitutional right was violated;**
- 2. that the violation was committed by a governmental entity; and**
- 3. that the entity was acting under the color of State law.**

*Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006)

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**Each city “holds the responsibility of adopting certain standards for the delivery of public defense services, with the most basic right being that counsel shall be provided.”**

*In re Michels*, 150 Wn.2d 159, 174 (Wash. 2003) (citing RCW 10.101.030)

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- **Mountain Law will provide “one full-time staff person and two attorneys”**
- **Mountain Law’s proposal is “\$210,000 for up to 1,735 cases per year.”**

Month	Cases Opened
Apr	473
May	434
Jun	112
July	172
Aug	150
Sept	114
Oct	142
Nov	138
Dec	135
<b>TOTAL</b>	<b>1,870</b>

## Mountain Law 2012 Caseload

**Open Cases**

**241**

208 Pending  
33 FTC Open (parole)  
241

**Bench Warrants**

**112**

**Closed Cases**

**67**

5 = Sept  
26 = Oct  
19 = Nov  
17 = Dec (MV only)  
67

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**TOTAL**

**420**

**Sade Smith Assigned Cases  
From Sept. 2012 to Jan. 16, 2013**



<b>Organization Name</b> <b>Case Load Statistics</b> Page: 1 of 1 01/16/2013					
Attorney	Status	BUR	GM	MVM	Total
Jesse G Collins	Bench Warrant	46		87	133
	FTC OPEN	25		43	68
	Pending	85		208	293
	POD Pending			1	1
Michael D. Laws	Bench Warrant	46		52	98
	FTC OPEN	6		19	25
	Pending	63		122	185
Sade Ada Smith	Bench Warrant	52		60	112
	FTC OPEN	12		21	33
	Pending	82	1	125	208
Grand Total		417	1	738	1156

Collins = 362

Laws = 210

Smith = 241

# Mountain Law Caseloads as of Jan. 16, 2013



**MEMORANDUM TO ALL ASSIGNED COUNSEL DEFENDANTS**

If you have been approved to be represented by the public defender in your case, there are several important things that you must be made aware of:

Our Attorneys: Jessie Collins – 360-336-0828 – [jcollins.mountainlaw@gmail.com](mailto:jcollins.mountainlaw@gmail.com)  
Michael Laws – 360-336-0828 – [milaws.mountainlaw@gmail.com](mailto:milaws.mountainlaw@gmail.com)

Our office is at: 2114 Riverside Drive Suite 206  
Mount Vernon, WA 98273

1. When you first receive notice that we have been appointed as your attorney, you should wait at least 24 hours before contacting our office. It takes the court some time to forward your information to our office. Once we have some of your basic information from the court, we will be able to effectively help you.
2. If you have already been in front of the judge, your case may have been continued to another date for "Further Arraignment". If that is the case, you might not need to show up for that hearing. A notice of appearance from our office automatically continues your case to a pretrial date, which would be at a later date, and a different time. The best way to determine if you have a different court date is to contact the court at 336-6205 (Mount Vernon) or 755-0492 (Burlington).
3. It is EXTREMELY important that our office and the court have your current address. It is your responsibility to keep both our office and the court advised of your current address. We also need your current telephone number at all times.
4. You must show up to each and every one of your court dates. Do not contact our office to obtain a different court date or a continuance unless it is a documented emergency or a documented extreme hardship to you. If you are unable to document an emergency or extreme hardship, do not wait until the last minute to call our office for a continuance. Call our office well ahead of time and the court might be able to accommodate your request – it is not our decision to make, it is the judge's decision. Unless you specifically hear from our office that you do not need to attend your hearing, you must attend your hearing or a warrant will be issued for your arrest.
5. In most situations, our office **does not quash warrants**. If you wish to quash a warrant, you can do so by going to the court and paying a warrant quashing fee, or by showing up at the end of a court calendar and requesting that the judge quash your warrant. They will issue you a new date to appear in court.
6. You may call our office to make an appointment to meet with your attorney. Often, however, we cannot schedule a meeting prior to your first pretrial hearing (there may not be enough time, or we may not yet have information about your case). It should not concern you if we are unable to meet with you prior to your first pretrial hearing; nothing will happen at that first hearing that is outside of your control and we can obtain necessary continuances to ensure that we have all the information needed to deal with your case.
7. Our representation of you stops when your case is resolved or 30 days after a warrant is issued for your arrest.

DEFS-BURL\_000471

**"Often...we cannot schedule a meeting prior to your first pretrial hearing...."**



## Failure to Communicate: Mountain Law

**From:** [Michael Laws](#) ←  
**To:** [Echavez, Vanessa](#); [patrick@easonlaw.com](mailto:patrick@easonlaw.com)  
**Cc:** [Sarah Serrano](#)  
**Subject:** In Custody Clients  
**Date:** Monday, September 24, 2012 1:20:30 PM  
**Attachments:** [image001.png](#)

**From:** [Michael Laws](#)  
**To:** [Echavez, Vanessa](#); [patrick@easonlaw.com](mailto:patrick@easonlaw.com)  
**Cc:** [Sarah Serrano](#)  
**Subject:** In Custody Clients  
**Date:** Monday, September 24, 2012 1:20:30 PM  
**Attachments:** [image001.png](#)

Vanessa / Pat:

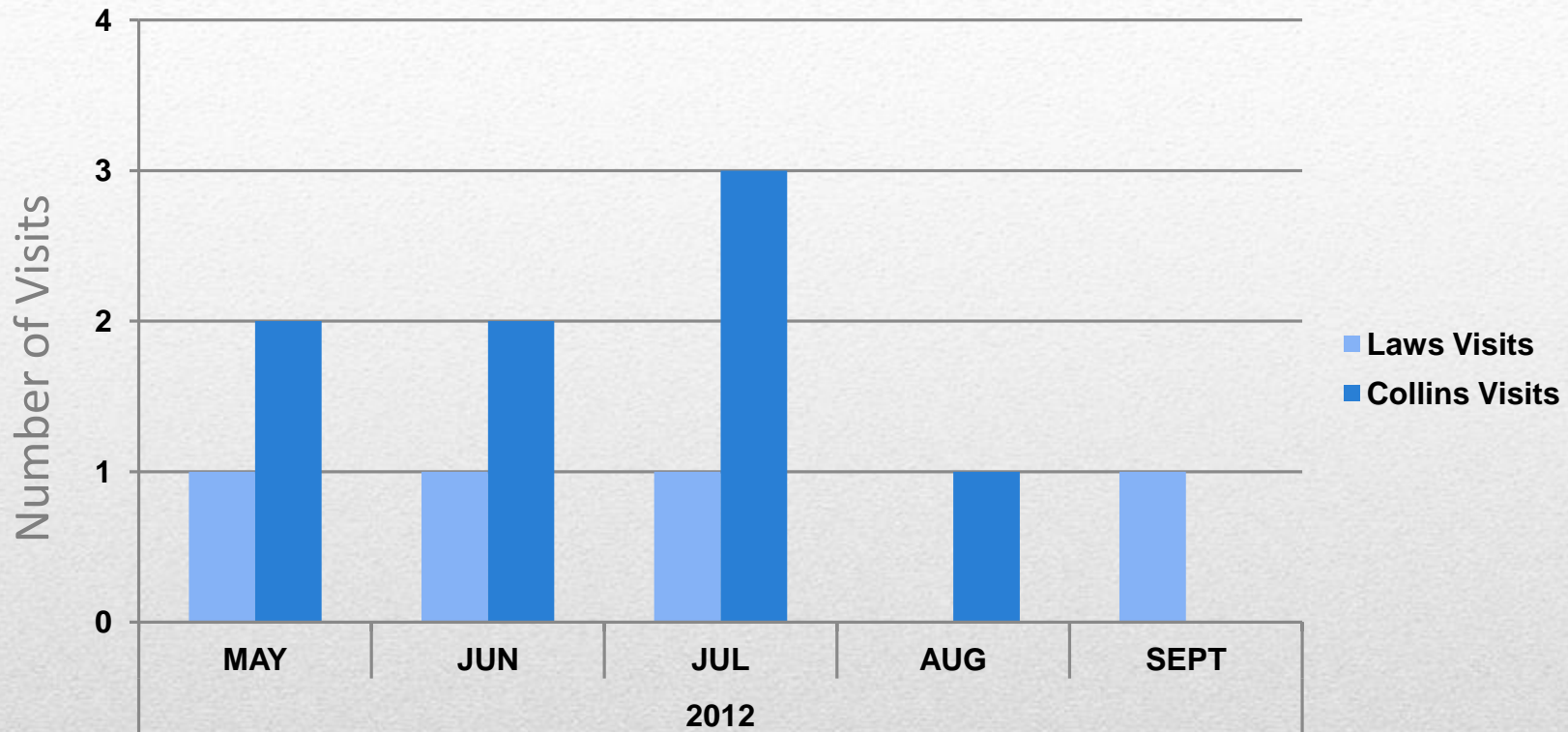
The clients below are in custody and have court October 2<sup>nd</sup>. I would like to go and visit them at the jail, but it is fairly pointless to do so until I have police reports and/or an offer to go over with them. The difficulty is that there is very little space in which to schedule time between now and 10/02/12 to go and visit them at the jail. I know that, for example, on Mr. Knott, we've only just been appointed and filed our NOA on 09/21/12 on the cases listed below. He also has 3 other matters that we represent him on where he'd bench warranted and we do have discovery on those, but again... a little bit pointless to go and try to talk to him about resolution on his cases if we don't have some type of global offer on all 6 files. Any info you can give me would help. Thanks!

MC002635  
2Z033324  
MC002664  
MC002754

**"I would like to go and visit them at the jail, but it is fairly pointless to do so until I have police reports and/or an offer to go over with them."**

## Failure to Communicate: Mountain Law





## Failure to Communicate: Mountain Law Jail Visits per Month May 1, 2012 to Sept. 19, 2012

**In 2012, Mountain Law opened  
1,870 cases and closed 1,007 cases.**

**Investigation services  
used only **four** times.**

**Failure to Investigate: Mountain Law**

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**In 2012, Mountain Law closed 1,007 cases.**

**Only **six** cases went to trial.**



- **Lack of communication**
- **Lack of investigation**
- **No research or motions**
- **Very few trials**
- **Insufficient time spent on cases**

**Calendar Practice**

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- Promptly meet with and interview the client
- Establish a confidential, attorney-client relationship
- Investigate the facts and conduct the research necessary to test the prosecution's case
- Advise and counsel the client
  - The client is the focus

**ALL OF THIS TAKES TIME AND EFFORT!**

## **Minimum Requirements**

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**The criminal justice system in Mount Vernon and Burlington is a “volume business.”**

Testimony of Burlington City Prosecutor

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**Q: “[W]hat has Mount Vernon done to ensure that the public defender does what the U.S. and Washington constitutions require.”**

**A. “The City does not agree that it has to ensure, secure, or guarantee anything. The City maintains that it has a limited duty in regards to public defenders.”**

**“[I]ndigent criminal defendants in Mount Vernon and Burlington are systematically deprived of the assistance of counsel at critical stages of the prosecution . . . .”**



### System During Time of Witt and Sybrandy

- “[A]lmost complete absence of opportunities for the accused to confer with appointed counsel in a confidential setting”
- Client communications regarding defenses, investigation, physical/mental health, immigration status, goals, and potential dispositions “were, if they occurred at all, perfunctory and/or public”
- Out of “thousands of cases,” there was “almost no evidence that [the public defenders] conducted investigations . . . nor is there any suggestion that they did legal analysis regarding the elements of the crime charged or possible defenses”
- “Substantive hearings and trials . . . were rare”

Court’s Memorandum of Decision (Dec. 4, 2013)

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## System Currently

- Handling caseloads “far in excess” of guidelines
- As a result, attorneys “simply unable” to interview clients in “majority of cases”
- “[I]nvestigations, legal research, and....cases set for trial... the numbers are still shockingly low”
  - “[S]poke to only three or four witnesses” in 2012”
  - “[N]o documentation of any legal analysis or research”
  - “[O]nly one pre-trial motion and five or six trials in 2012”

Court’s Memorandum of Decision (Dec. 4, 2013)

**“Timely and confidential input from the client...  
[is] essential to an informed representational  
relationship.”**

**“It is the lack of a representational relationship...  
that makes the situation in Mount Vernon and  
Burlington so troubling and gives rise to the Sixth  
Amendment violation.”**



**“[D]ecisions made by [Cities’] policymaking authorities...directly caused the truncated case handling procedures that have deprived indigent criminal defendants [of]...**

- private attorney/client consultation,**
- reasonable investigation and advocacy,**
- and the adversarial testing of the prosecutor’s case.”**



**“wilfully blind”**

- **Officials for Cities “shall read the Washington Defender Association’s 2007 Final Standards for Public Defense Services”**
- **Cities shall “re-evaluate their existing contract for the provision of public defense” to ensure system provides “actual assistance of counsel”**
- **“Cities shall hire one part-time Public Defense Supervisor to work at least twenty hours per week”**

- **Oversee and evaluate public defenders on various factors**
- **Monitor workloads**
- **Review random selected case files**
- **Review complaints and response of public defenders**
- **Analyze and collect data regarding cases and dispositions**
- **Report every six months on whether Cities are complying with constitutional obligations**



**“It has been fifty years since the United States Supreme Court first recognized that the accused has a right to the assistance of counsel for his defense in all criminal prosecutions....The notes of freedom and liberty that emerged from Gideon’s trumpet a half a century ago cannot survive if that trumpet is muted and dented by harsh fiscal measures that reduce the promise to a hollow shell of a hallowed right.”**